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GOVERNOR

THE STATE OF WYOMING

STATE CAPITOL
CHEYENNE, WY 82002

Office of the Governor

January 8, 2010

The Honorable Ken Salazar
Secretary of the Interior
1849 C Street NW
Washington, DC 20240

Dear Secretary Salazar:

I write to you concerning the U.S. Department of the Interior's (Department) oil and gas leasing policy changes that were announced on Wednesday. I appreciate your stated intentions to restore balance to the leasing program. Unfortunately, the proposed changes potentially hand significant control over oil and gas exploration, development and production to the whims of those that profess a "nowhere, not ever" philosophy to surface disturbance of any kind. In addition, the changes appear duplicative, do not contemplate the significant manpower that will be required for their effective implementation and lack important details, which might serve to alleviate – or perhaps intensify my level of concern. As I will detail further, my hope would be for the Department to focus its energy and attention on compliance, monitoring, inspections and implementation – rather than on a prematurely constraining leasing program that will functionally tie a millstone around the neck of the Department and detract from the more pressing issues of the day.

In terms of development, I have always been a strong proponent of balance. In general, given the right information and proper motivation, we have usually found our way to a development array that meets the terms of those that understand the need for *both* production and protection. Frankly, we know that there will never be a meeting of the minds of those in the "drill here, drill now" crowd and the "not one blade of grass" crowd, mainly because neither side is willing to give toward the middle. Unfortunately, Washington, D.C. seems to go from pillar to post to placate what is perceived as a key constituency. I only half-heartedly joke with those in industry that, during the prior administration, their names were chiseled above the chairs outside the office of the Assistant Secretary for Lands and Minerals. With the changes announced yesterday, I fear that we are merely swapping the names above those same chairs to environmental interests, giving them a stranglehold on an already cumbersome process. Meanwhile in places like Cheyenne, Casper, Wamsutter and Cody, Wyoming, we in the middle simply want a good job, clean air, healthy watersheds and a place to hunt, fish and hike with our families.

With specific regard to the proposed changes, it seems as though the Department contemplates adding up to three additional layers of analysis into the existing leasing process. The first would be introduced at the newly minted "Master Leasing and Development Planning" (MLDP) phase, the second during the Interdisciplinary Team (ID Team) evaluation and review and the third after the ID Team has completed its review and must then identify "appropriate mitigation measures for protection of the environment." While the second and third steps could practically be melded together, significant new (and seemingly redundant) reviews will be instituted under the

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new policy – before we even get to the practical realities of development. To my point, these reviews will be made irrespective of (actually completely devoid of in most instances) substantive seismic, exploration or other subsurface data. Functionally, it seems that we are putting on two additional belts and two additional pairs of suspenders without even knowing if we are going to wear pants.

The proposed changes, as noted, are proposed *in addition to* the existing leasing program, which already contemplates a land use plan, consultation with the states and their agencies of jurisdiction regarding leasing decisions, project specific NEPA, an application for permit to drill and compliance with state wildlife, air, water and land quality protections. I question the need for so many reviews, especially when leasing is such a small part of the development equation.

As you know, I have had my own moments of angst with certain oil and gas leases, most notably tied to development schemes in the Wyoming Range (on leases that were ironically leased during the Clinton administration) and in Pinedale when the industry sought to develop without appropriate mitigation. This said I still see the proposed, overly burdensome changes as throwing the proverbial baby out with the bathwater.

In fairness, I understand that Newton's third law of motion is alive and well in this discussion. To every action, there is an equal and opposite reaction. Given the overreaching that took place during the previous administration, I understand the temptation to conjure up a drastic remedy for what was perceived by some as a sell out to oil and gas interests. But I would caution that while the Department may wish to right old wrongs, it must look ahead to future elections and their implications. While today the addition of "interested groups and individuals" to the leasing process functionally means only conservation-minded individuals –even the most optimistic mind could easily contemplate a world where the oil and gas industry would be the only "groups and individuals" called to the table. In my view, neither approach is appropriate.

Above all I am concerned with how the policy will be implemented in practical terms. To face facts, federal budgets continue to dwindle for land management agencies, in a time when people like me are demanding more in terms of oversight, inspection and implementation. Even with modest increases in personnel and funding, the new leasing policy not only piles on additional burdens with regard to environmental analysis (in the NEPA sense, which is not only time consuming but, in reality, pulls energy from seemingly every technician and their day-to-day work in the field) but adds even more onerous and time consuming "on-the-ground reconnaissance of parcels" "in most cases." In Wyoming, since June of 2008, over 1.2 million acres were sold (not offered, but sold). To provide the "on-the-ground reconnaissance" that will probably be required (especially to placate those "interested groups and individuals" that will now be involved in leasing decisions) will involve thousands of new man hours in the state of Wyoming alone – man hours that absolutely should not and in practice cannot be extracted from existing duties and responsibilities.

One of the points of justification for the policy is the potential to reduce the number of challenges and protests and, ultimately, the amount of litigation emanating from these objections. With rational players, this expectation and rationale makes sense. In reality, though, the new technical and procedural reviews merely offer more opportunities for challenge. Even the most perfect review will be challenged by someone or some group – to assume otherwise is simply naïve given the realities of the citizen suit provisions of the Equal Access to Justice Act and the ever-present "not in my backyard" interests. With additional litigation, the agency range conservationist,

realty specialist, wildlife biologist and other technicians will not only be taken away from the essential work of monitoring, inspection, compliance and implementation to complete the additional analysis and on-site reconnaissance contemplated in the proposed leasing changes, but now will also have to spend more time in the office completing file reviews in preparation for litigation. This is especially true with two to three new "decision points" that will undoubtedly be ripe for potential litigation, requiring even more files and paperwork to bolster the record and defend the Department's decisions.

In the coming weeks, I trust that more detail will be forthcoming regarding the policy changes. Some understanding of the procedural mechanisms involved in the crafting of the MLDP would be very helpful. Does the MLDP require additional NEPA analysis? If so, what level of analysis is required? Does the MLDP process supersede the existing Resource Management Plan (RMP) allocations? If so, is an RMP amendment required? What level of "public involvement" will be required? Who will be involved? Will the name of the nominating entity or company be made public? Does Cooperating Agency Status apply? How are the "key issues such as protection of air quality, watersheds, wilderness, wildlife and nearby land uses" identified? How is the protection of these resources undertaken in the absence of seismic, exploration and other subsurface data, especially in areas that have, heretofore, been "mostly unleased and undeveloped?" How are leasing and development-level mitigation measures developed in the absence of seismic, exploration and project-specific development information? If mitigation is defined, will additional NEPA analysis be completed to allow further comment by industry and others on the proposed mitigation? Who will be on the ID Teams that will review parcels proposed for leasing? Will the ID Team reviews be conducted pursuant to NEPA? Will a specific timeframe be allotted within which the on-the-ground reconnaissance must be completed? How will the Department identify who is and who is not an "interested" group or individual for involvement in the ID Team process? Will "non-interested" parties have an opportunity to request a participatory role? Will the "environmental review document" prepared by the field offices after the ID Team completes its review be prepared pursuant to NEPA? If lease stipulations are added or amended by the field office following the ID Team review, will an RMP amendment be required? How long will the public review and comment period be for the draft environmental review document prepared to evaluate existing, revised, and/or new stipulations? Before the parcel is finally offered, how will the BLM determine what mitigation measures are required in the absence of seismic, exploration and project-specific development information? Including all reviews, both existing and new, what is the expected timeframe to move from nomination to final offering? After the leases have been sold, will the site-specific and/or project level NEPA be attenuated to account for the analysis that has theoretically already been completed and the additional protections that have theoretically be instituted?

All said, it seems that the pre-lease safeguards are well intentioned, but are also duplicative of one another and of existing procedures, including RMP prescriptions, project-level NEPA and site-specific application for permit to drill analysis. I am not suggesting that, as applied, these existing procedures have always been applied correctly or are, in themselves, sufficient. However, I will say that the new pre-lease procedures seem to ignore the realities involved with traditional oil and gas leasing, exploration, development and production – especially in those areas that are mostly unleased and undeveloped.

In my view, the myriad of new paperwork and process could be replaced by a simple process wherein deference is given to the RMP allocations but state game and fish, air, water and land map

overlays are subsequently applied to ensure that such resources can be adequately protected by RMP stipulations. Following consultation with state agencies, if conditions of approval can be applied to the lease sufficient to protect these resources, BLM would apply them and move forward with leasing. If new stipulations are deemed necessary, BLM should initiate an RMP amendment. To invent new stipulations without an RMP amendment or other NEPA process opens the door for the arbitrary and capricious exercise of authority in the face of an RMP that was developed with the participation of the public. But it is equally egregious to rely on RMP allocations that may or may not reflect new and emerging issues on the landscape.

One final and extremely important question: will the new policy be applied prospectively or retroactively? If it will be applied retroactively, in addition to the questions I have already raised, what is the timeframe to dispense with the backlog of unissued oil and gas leases in Wyoming? If it will only be applied prospectively, how will the accumulation of unissued oil and gas leases in Wyoming be treated? Needless to say, I am very anxious to bring some resolution to the question of how the almost 2,000 parcels that have been awaiting action since June of 2008 will be addressed. The Department needs to make a call on those leases and get moving. Your agency simply cannot stall the leasing program for that long without impacting industry, and by extension, the state. As I understand it, about $26 million in state bonus bid revenues are being held up, which would be very helpful as we head into some fairly lean times in Wyoming, and this makes no mention of the long term royalties that will not be generated until the leases are conveyed. Schools, main street businesses and other important public and private sector services are potentially at risk in the absence of clear guidance from the Department – so I implore your immediate attention to these unissued leases, even as you hone your new leasing strategy. In this regard, I have been advised that most of these leases have been reviewed by the Wyoming Game and Fish Department and my office relative to their potential to impact big game and other wildlife and by the Wyoming State BLM Office relative to the new *Greater Sage-Grouse Habitat Management Policy on Wyoming BLM Administered Public Lands including the Federal Mineral Estate Instruction Memorandum.* As such, I trust that the Department can, with great confidence, expeditiously address the existing protests and issue all tracts deemed appropriate for issuance.

Some would say that the oil and gas industry is getting what it deserves. But this is much too serious an issue for such pettiness. This involves families and jobs, schools and care for those on Medicaid – all at a time when our national and local economy is faltering. It involves an industry that has seen the application for permit to drill fee jump to $6500 and the exemption for intangible drilling costs threatened. It involves environmental interests that demand renewable energy, but neglect the reality that natural gas will provide the backup power that will allow renewables to be viable. We must be thoughtful and truly fix what needs fixing. And while I think that the proposed policy has missed the mark, I am more than willing to put my shoulder to the wheel to help recraft it into a more functional and rational program.

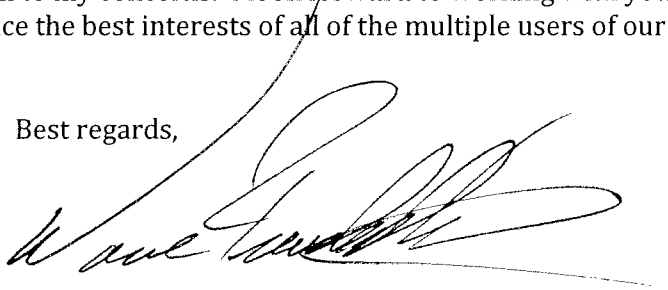
Beyond leasing, I would also like to address the proposed changes to the Energy Policy Act of 2005 categorical exclusions. I certainly appreciate your attention to an issue that has caused me heartburn for some time now. As I read it, the proposed change would make the statutory categorical exclusions subject to the "extraordinary circumstances" review required under NEPA. While I have some question as to whether the Department can administratively condition an act of Congress, my real concern is that even with an "extraordinary circumstances" review, the infirmities associated with Section 390(b)(3) still persist.

My concern with Section 390(b)(3) is not that extraordinary circumstances will be ignored nor is my concern that site-specific NEPA will not be completed. My concern is that any categorical exclusion for drilling that is tiered from an RMP and its 30,000 foot analysis has the real potential to impair our air and impact our wildlife as no useful cumulative effects analysis accompanies the site-specific reviews for each application for permit to drill. Functionally, we add one ton of air pollution here and another there – and before we know it, the air is polluted. With wildlife, we add a well here and a well there and eventually, we have a couple hundred wells and no more crucial winter habitat for big game. We add and add and add, without knowing where the edge of the cliff is likely to begin. Admittedly, my concerns must be addressed through legislation, but I would hope that the proposed changes would not be seen as a panacea for all issues tied to Section 390 categorical exclusions as work remains to be done.

To conclude, I appreciate your willingness to engage the outstanding questions and problems associated with oil and gas leasing and development. While I ultimately cannot support many of the proposed changes, I reiterate my offer to help revise the policy to make it more acceptable. I would also suggest that the Department's next effort at reform be aimed at wind leasing and development. As it stands, the policy incentivizes the wrong things and has the potential to be more environmentally detrimental than oil and gas leasing and development. As with the oil and gas reforms, I would offer my help to the Department to help revamp its wind program to better reflect modern realities.

Thank you for your time and attention to my concerns. I look forward to working with you on these and other issues to attempt to balance the best interests of all of the multiple users of our public lands.

Best regards,



Dave Freudenthal
Governor

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